

REMARKS

This amendment is being filed in response to the Office Action dated October 10, 2006. A three month extension of time is also being filed herewith. The Examiner again has rejected claims 1-3, 5-7, and 9-18, and objected to claims 4 and 8. Before responding to the specifics of this particular Office Action, Applicant first directs the attention of the Examiner to the Office Action Summary sheet enclosed with this Office Action and with the one enclosed with the previous Office Action. In the Office Action of October 10, under "Status" the Examiner states that this Office Action is responsive to communication(s) filed on "09/15/2004 and 1/11/2005" although in reality this Office Action is responsive to Applicant's communication filed on "09/13/2006". Additionally, although the prior Office Action was made "final", in response to Applicant's filing on a RCE the Examiner withdrew the final rejection as he indicates at the top of page 2 of this Office Action. Despite the withdrawal of the finality of the previous Office Action, line 2a of the "Status" portion of the Office Action Summary is checked implying that this action is final, while at the same time line 2b is checked that this action is non-final. Based on the language at the top of page 2 of the Office Action, and the fact that no other reference in the entire Office Action is made to this particular Office Action being final, it must be concluded that the only way that the Office Action Summary sheet makes sense is to recognize that this Office Action is in response to the communication filed on September 13, 2006 and that this Office Action is non-final.

Furthermore, although Applicant's last response addressed the previous drawing and Section 112 issues noted in the last Office Action, no mention is made concerning

those issues in this Office Action. Therefore, Applicant submits that the Examiner has withdrawn his previous objections to the drawings as well as his rejections under Section 112.

Turning now to the outstanding rejections under Section 102(b) and 103(a), the Examiner has rejected claims 1, 2, 5, 6, 7, 9 and 12-14 under 35 USC 102(b) based on Gibbs, US Pat. No. 1,305,710. Claims 1 and 12 have been amended based on the comments of the Examiner in this Office Action to include the limitation that the updraft facilitation means (formerly referred to as the cone) is in contacting relationship to the second chamber bottom surface, and that it is spaced in totality inwardly of the second chamber sidewall. These limitations are not shown in Gibbs. In Gibbs, the receptacle 16 is suspended above, not atop, the second chamber bottom surface, and certainly not in contacting relationship thereto as can clearly be seen in Fig. 5. In Gibbs, the second chamber in effect hangs from the walls 6 of the first chamber as disclosed on page 2 lines 26-32 of the reference. The cone member of Gibbs is also stated as being supported in receptacle 16, such that it can not be atop the second chamber bottom surface, with this structure of Gibbs being disclosed on page 2 lines 56-80.

Additionally, the cone member of Gibbs physically contacts the receptacle at its lower end, such that the totality of the updraft facilitation means is not spaced inwardly of the second chamber sidewall. Thus the structural limitations of claim 1 of Applicant's invention are not disclosed in Gibbs, and would not be obvious since this would require complete modification of the structure of Gibbs with such modification going contrary to the explicit teaching of Gibbs that the second chamber hang from the top of the wall of

the first chamber so as to suspend the cone above (but not atop) the bottom surface of the second chamber. For these reasons independent claims 1 and 12 are not anticipated nor made obvious by Gibbs, and therefore the claims rejected based on Gibbs should now be allowable.

The Examiner also rejected claims 1-3, 5, 6, 9-13, and 16-18 under 35 USC 103(a) based on Rignell, US Pat. No. 2,722,883 in view of Zugg, US Pat. No. 177,978. Although Applicant in the previous response to the last Office Action submitted several reasons why the invention of Applicant was not obvious based on the combination argued by the Examiner, no specific response was made by the Examiner to any of Applicant's well-reasoned comments. Instead, the exact wording of the Examiner's last Office Action was repeated word for word. Applicant submits that unless the Examiner can respond to each of the reasons set forth by Applicant that support the patentability of this invention, the claims should be allowed.

To assist the Examiner in recalling the reasons why the combination argued by the Examiner does not render Applicant's invention obvious, Applicant will again repeat its earlier remarks, and requests as the POBA will should an appeal become necessary, that either each of Applicant's comments be responded to or the claims allowed. That being said, claims 1 and 12 were amended in Applicant's last communication to include the limitation that the second chamber bottom surface is planar and extends across said second chamber. The second chamber bottom surface of Rignell as construed by the Examiner is only a flange 12 which extends only a short way into the interior of the chamber as disclosed in column 1, lines 46-50. It cannot extend across the second

chamber, since to do so would preclude the placement of the coals at the bottom of the first chamber of Rignell as construed by the Examiner, thus defeating the operation of the reference. Thus the proposed modification of Rignell would not be obvious to one of ordinary skill in the art.

Additionally, claims 1 and 12 have been amended in Applicant's last response and as clarified in this response to recite that the updraft facilitation means has a sidewall with a plurality of apertures extending therethrough. Zugg explicitly discloses that its cone or updraft facilitation means has non-perforated walls. This is because the purpose of the cone or updraft facilitation means in Zugg is to transport the gasses from the lower chamber to a point above the food in the bucket which surrounds the cone/updraft facilitation means. Thus there is no reason for apertures in Zugg's cone/updraft facilitation means, and thus there is no reason to design the cone/updraft facilitation means of Zugg in that way. Zugg teaches away from a perforated cone/updraft facilitation means, and thus there would be no reason to try to combine features from a device like Zugg with Rignell, and the fact that Zugg teaches away from the desired solution of Applicant's invention, Applicant submits that it would not be obvious to combine the references as argued by the Examiner.

Additionally, the Examiner also rejected claims 7 and 14 under 35 USC 103(a) based on Zugg, US Pat. No. 177,978, in view of Rignell, US Pat. No. 2,722,883 or Galvak, US Pat. No. 1,290,168. Once again, although Applicant in the previous response to the last Office Action submitted several reasons why the invention of Applicant was not obvious based on the combination argued by the Examiner, no specific response was

made by the Examiner to any of Applicant's well-reasoned comments. Instead, the exact wording of the Examiner's last Office Action was once again repeated word for word. Applicant submits that unless the Examiner can respond to each of the reasons set forth by Applicant that support the patentability of this invention, the claims should be allowed.

To assist the Examiner in recalling the reasons why the combination argued by the Examiner does not render Applicant's invention obvious, Applicant will again repeat its earlier remarks and its limitations as set forth in claim 7 as further amended in this response, and requests as the POBA will should an appeal become necessary, that either each of Applicant's comments be responded to or the claims allowed. That being said, Claim 7 was amended in Applicant's last response to recite the place of attachment of the handle, and with such limitation further set forth in this response. Zugg discloses the handle being attached to the lowermost (first) chamber, as opposed to Applicant's second chamber. Therefore combining Zugg and Rignell would not result in Applicant's claimed invention, and there is no suggestion to attach Zugg at the top, not to mention that attaching it only at the top chamber would not permit the other chamber to be attached. The handle in Gavlak is only on the cover, not the sidewall of the second chamber. Thus claim 7 as amended should be allowable. With respect to claim 14, Applicant's comments in the preceding paragraphs concerning Rignell and Zugg are believed to address the limitations of claim 14 which Applicant submits is also allowable.

While Applicant agrees that claims 4 and 8 would be allowable as independent claims, it is believed that by clarifying Applicant's invention and by focusing on specific

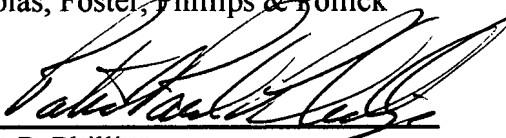
Ser. No. 10/650, 416  
Docket No. DEZ 001 P2

aspects of Applicant's claims which patentably distinguish the invention over the cited art, claims 1-14, and 16-19 are in condition for allowance. However, with respect to claims 4 and 8, the Examiner states that they would be allowable if "rewritten or amended to overcome the rejections(s)" under Section 112, the problem being that nowhere in this Office Action are any rejections under Section 112 mentioned. Thus, to make sense, this paragraph at the top of page 10 of this Office Action has to mean that claims 4 and 8 would be allowable if rewritten in independent form. In addition, new claim 19 has been added, with this claim having the scope of claim 7 but being dependent on claim 12. Based on Applicant's comments as set forth above, it too should be allowable.

If the Examiner has any questions or comments which would expedite the issuance of a Notice of Allowance, a telephone call to the undersigned is requested.

Respectfully submitted,

Kremblas, Foster, Phillips & Pollick

By   
Patrick P. Phillips  
Registration No. 29,690

7632 Slate Ridge Blvd.  
Reynoldsburg, Ohio 43068  
(614) 575-2100  
(614) 575-2149 FAX  
[pphillips@ohiopatent.com](mailto:pphillips@ohiopatent.com)

April 10, 2007